(26)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

CRIMINAL APPEAL No. 440/2000

Appellant (In Jail)	Sodi Chamaru, S/o Ganga Muriya, R/o Village Chopel, P.S.- Sukma, Distt. Dantewada (C.G.).
	Vs.
Respondent	State of Chhattisgarh

PRESENT

Shri Abhay Tiwari, counsel for the appellant.
Shri Akhil Mishra, Panel Lawyer for respondent/State.

JUDGMENT
(Dated on 29.3.2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 10.12.1999 passed by III Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 146/99 whereby learned Additional Sessions Judge, after holding the appellant guilty for committing offence punishable under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/- (Rupees Five Thousand), in default of payment of fine to further undergo R.I. for one year

2) Appellant and deceased being husband and wife were living together. On 10.1.1999 about 9 P.M. at night, appellant

came under intoxication and asked for meal. Deceased Sodi Sukudi refused to serve meal, alleging that you always come drunk at night. Appellant got enraged and assaulted her with wooden club who received multiple injuries and succumbed to it. On the next day, a Panchayat was convened and appellant before Panchayat confessed his guilt. Sodi Sukda elder brother of the appellant reported the matter to Police. On his report merg intimation and First Information Report were recorded. The matter was investigated, spot map was prepared, blood stained earth and control earth were collected and thereafter the dead body was sent for postmortem. Dr. Devendra Krisan conducted the postmortem who in his report described the injuries found over the body of the deceased and opined that cause of death was strangulation and death was homicidal in nature. The wooden club seized from the appellant was examined by the medical officer who after examination, opined that the injuries found on the body of Sodi Sukudi may be caused by the wooden club so seized. Witnesses were examined under Section 161 of Cr.P.C. After completion of investigation, challan under Section 302 of I.P.C. against the appellant was filed in the Court of Judicial Magistrate, Ist Class, Sukma who committed the case to the court of Sessions for trial.

3) Charge under Section 302 of the I.P.C. was framed against the appellant and the same was read over and explained to him who abjured the guilt and pleaded that he is innocent and has been falsely implicated in the case. Learned trial Court after evaluating the evidence on record held that the death of deceased

was homicidal in nature and appellant was author of the crime, accordingly appellant was convicted and sentenced.

4) Appellant did not challenge the injuries found on the body of deceased (Sodi Sukidi) and also did not challenge the nature of the death which is homicidal in nature. Even otherwise from the statement of Dr. Devendra Krishan (PW/1) and autopsy report Ex. P-1, it has been established that following injuries were found on the body of deceased, the cause of death was due to strangulation, and the death was homicidal in nature.

External Examination:

"1. Abrasion- two abrasion mark seen in left lateral side of lower part of chest equal in, size 1" x 4"
2. Contusion- On middle part of back of neck size 2 " x 3".
3. Abrasion- on back of left elbow joint.
4. Congestion of front of neck.

Internal Examination:

3rd and 4th cervical vertebra and thyroid cartilage were found fractured.

5) Mudharam (PW/2) and Sodi Kosa (PW/3) have deposed that a meeting was held in the village, where appellant was called and questioned. Appellant before Panchayat stated that his wife did not serve him meals, therefore, he pushed her. Mudharam (PW/2) further stated that appellant also stated that she fell down over wood and died. Erra (PW/5) in his statement

stated that when they enquired from the appellant, he disclosed that deceased was not serving him meal, therefore, he assaulted her. He also deposed that in appellant's house only appellant and his wife (deceased) were living. Podiya (PW/6), in his statement deposed that appellant was living in his house accompanied with his wife (deceased) and two small kids.

6) Although Erra (PW/5) has at one place denied the evidence of extra judicial confession made by the appellant, therefore, the evidence of extra judicial confession made by him cannot be accepted to be true until supported by other sources. From medical report, it is evident that the injuries were found on various parts of the body. From the statement of Dr. Devendra Krishan (PW/1), it is also evident that the injuries may be caused by wooden club. It is also established that the deceased died due to strangulation. The defence of the appellant before the Panchayat was that he pushed his wife who fell down as a result of which she died. Knowingly false defence has been taken by him. This itself is an incriminating circumstance against the appellant. It has also been established that in the said house only appellant along with his wife – Sodi Sukudi (deceased) and two small kids were living. In the night appellant came and asked for meals to his wife (deceased) who refused to serve him meals and in his presence she received multiple injuries. All the above circumstances are corroborating the evidence of extra judicial confession made by the appellant in presence of Erra (PW/5), therefore, his evidence on extra judicial confession made by the appellant is reliable.

7) In cases of circumstantial evidence inference of guilt can be recorded if all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Law on extra judicial confession has also been settled and according to it if extra judicial confession is clear, cogent and appear to have been made in normal course without any pressure that can be acted upon.

8) Here in the instant case, Erra (PW/5) is one of the villagers having no animus with the appellant who corroborated the fact of extra judicial confession made by the appellant. His statement is duly supported by various other evidence as stated above and is reliable. On the fateful day, appellant and his wife deceased Sodi Sukdi were inside the house. Sodi Sukdi died in presence of appellant as a result of strangulation and her death was homicidal in nature. She died inside the house. Appellant before Panchayat admitted the fact that he asked for meal and his wife deceased Sodi Sukdi did not provide it, therefore, he pushed her. Appellant also admitted that his wife Sodi Sukdi died inside the house and in his presence. From all the circumstances and evidence of extra judicial confession only inference which can be drawn is that the appellant is the author of the crime who killed his wife Sodi Sukdi. Therefore, it was established that Sodi Sukdi, the wife of the appellant was assaulted by the appellant who not only assaulted her but also killed her by strangulation.

9) Learned counsel for the appellant relying on the judgment rendered by Hon'ble Apex Court **In Ranjha & another Vs. State of Punjab, reported in 1996 (6) Supreme 364,**

contended that appellant as a result of sudden provocation and in a spur of moment, without having any intention, assaulted his wife, therefore, his case falls under Section 304 part 2 of the I.P.C. We are afraid to accept the contention because here in the instant case appellant not only killed his wife by strangulation but also inflicted multiple injuries on her, she received grievous injuries i.e., fracture of 3rd and 4th cervical vertebra and thyroid cartilage. In the light of injuries found over the body of the deceased and the manner in which her death was caused that itself is sufficient to establish that the appellant intentionally and knowingly killed his wife brutally.

10) In the result, we are of the considered opinion that the learned Court below convicting and sentencing the appellant for committing murder of his own wife Sodi Sukudi punishable under Section 302 of the IPC., has not committed any illegality which may call for any interference.

11) The appeal fails and is dismissed.

Sd/-
V.K. Shrivatava
Judge

29/03/2006

Sd/-
Dhirendra Mishra
Judge

29/03/2006

kvr.